

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID GORDON CANTRELL,

Plaintiff,

v.

ADMINISTRATIVE SUBDIVISION, *et al.*,

Defendants.

Case No. C07-5272RJB

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on consideration of the Plaintiff's Motion for Appointment of an Attorney (Dkt. 21) and the Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom (Dkt. 15). The Court has considered the relevant documents and the file herein.

This is a Civil Rights action, filed pursuant to 42 U.S.C. §1983. Dkt. 1. On July 30, 2007, Judge Strombom issued an Order to Show Cause, informing Plaintiff that his complaint failed to state a claim for which relief could be granted and gave Plaintiff ample opportunity to cure the deficiencies. Dkt. 9. Plaintiff filed to comply. On September 5, 2007, Judge Strombom recommended that the Court dismiss the action for failure to state a claim. Dkt. 15.

Plaintiff has filed several pleadings since the Report and Recommendation. Dkts. 16-21. None of the pleadings have cured the deficiencies identified by Judge Strombom. For example, on September 11, 2007, Plaintiff filed pleading entitled "In Forma Pauperis Application Checklist." Dkt. 16. The pleading makes statements like "Petition for Feloney, [sic] Criminal Inditments [sic] of Defendants Noted on VS-44" with no explanation or meaningful reference. *Id.* The pleading entitled "Order Adopting Report and Recommendation Objection" is the proposed order form submitted by Judge Strombom. Dkt. 19. Plaintiff has written "USC # S. §11 §§ 62 a Relef [sic] of Default of Detor [sic] Contest . . ." on this document. *Id.*

1 On September 12, 2007, Plaintiff filed a pleading entitled "Attorney Request Form." Dkt. 21. This  
 2 pleading is a form, and by the line "Name of Attorney" Plaintiff has written "Public Defender." *Id.*

### 3 *MOTION FOR APPOINTMENT OF COUNSEL*

4 Under 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person unable to  
 5 afford counsel. Under Section 1915, the court may appoint counsel in exceptional circumstances.  
 6 *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional circumstances, the court  
 7 must evaluate the likelihood of success on the merits and the ability of the petitioner to articulate the claims  
 8 pro se in light of the complexity of the legal issues involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th  
 9 Cir. 1983). Plaintiff has failed to allege any facts to support a claim under 42 U.S.C. §1983. Plaintiff has  
 10 not shown that he is likely to succeed on the merits. His motion for appointment of an attorney should be  
 11 denied.

### 12 *REPORT AND RECOMMENDATION*

13 To state a claim under 42 U.S.C. §1983, a complaint must allege that (1) the conduct complained  
 14 of was committed by a person acting under color of state law and that (2) the conduct deprived a person of  
 15 a right, privilege, or immunity secured by the Constitution or laws of the United States. *Parratt v. Taylor*,  
 16 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986).  
 17 Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are  
 18 present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).  
 19

20 Plaintiff has failed to name a single person in this matter. He has not alleged that he has been  
 21 deprived of a right, privilege or immunity secured by the Constitution or laws of the United States.  
 22 Plaintiff has not complied with the Court's orders to cure his complaint. This case should be dismissed for  
 23 failure to state a claim.


24 Additionally, this case is frivolous. A complaint is frivolous when it has no arguable basis in law or  
 25 fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984). Plaintiff has failed to allege even the most  
 26 basic of facts required to state a claim under 28 U.S.C. §1983. When a complaint is frivolous, fails to state  
 27 a claim, or contains a complete defense to the action on its face, the court may dismiss an *in forma*  
 28 *pauperis* complaint at any time, including before service of process under 28 U.S.C. § 1915A(b). *See Noll*  
*v. Carson*, 809 F.2d 1446 (9th Cir. 1987). Accordingly, the Report and Recommendation (Dkt. 15) should  
 be adopted and this case should be dismissed for failure to state a claim upon which relief may be granted

1 and for being frivolous. Moreover, this case should count as a strike pursuant to 28 U.S.C. § 1915(g).

2 Therefore, it is hereby **ORDERED** that:

- 3 • Plaintiff's Motion to Appoint Counsel (Dkt. 21) is **DENIED**;
- 4 • Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom (Dkt. 15) is
- 5 **ADOPTED** and this matter is **DISMISSED WITH PREJUDICE**;
- 6 • This dismissal counts as a **STRIKE** pursuant to **28 U.S.C. § 1915(g)**;
- 7 • The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of
- 8 record, to any party appearing *pro se* at said party's last known address and to the Hon.
- 9 Karen L. Strombom.

10 DATED this 2<sup>nd</sup> day of October, 2007.

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12 ROBERT J. BRYAN  
13 United States District Judge

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